



# CITY COUNCIL AGENDA STATEMENT



February 14, 2012 Item No. 13

**ITEM TITLE:** REPORT REGARDING REAL ESTATE FRAUD AND CRIMINAL  
TRESPASS ACTIVITIES AT VACANT PROPERTIES AND  
ONGOING MEASURES TO MITIGATE SAME

**SUBMITTED BY:** CITY ATTORNEY   
CHIEF OF POLICE 

**REVIEWED BY:** CITY MANAGER 

4/5THS VOTE: YES ☐ NO ☒

## BACKGROUND

In fall of 2011 the Police Department began receiving calls for service with and allegations of criminal fraud and trespass with respect to a growing number of houses located in eastern Chula Vista. Almost all of the reports involved a Diane "Harmony" Brown and her organization entitled "Prudent Constituents Association" (PCA).

Ms. Brown's alleged criminal scheme began with her recording quitclaim deeds on abandoned or foreclosed residential properties. She would then claim ownership based on such deeds, break into and enter the properties, replace signs posted by other real estate companies with her PCA signs, and either occupy the properties herself, or rent out the properties to tenants for cash payments.

Calls for service to the "Chula Vista Police Department" (CVPD) as a result of Ms. Brown's conduct typically arose from confrontations between Ms. Brown and any one of a number of real estate agents managing vacant properties for foreclosing banks. The Chula Vista Police Department patrol and/or property crimes division responded to each call and prepared over 36 reports detailing this fraudulent activity. These reports, and other evidence gathered at the scene, were submitted to the District Attorney's Office for further investigation and, if appropriate, prosecution. Ms. Brown's activities continued and expanded, creating substantial frustration and concern among real estate professionals and within affected neighborhoods.

In early January representatives from the Pacific Southwest Association of Realtors ("PSAR") contacted the City Attorney to present their concerns and frustrations regarding Ms. Brown's

actions and to seek help. Following a series of internal meetings, on January 5<sup>th</sup>, 2012 the City Attorney met with a group of about 15 PSAR affiliated real estate brokers, agents and title professionals. The purpose of the meeting was to share “front-line” perspectives on the scope and nature of the problem and to start identifying possible solutions. Since almost 100% of the incidents were caused by the Brown group it was clear that a criminal prosecution by the DA was the primary action required for Ms. Brown. However, it was also acknowledged that this type of conduct could be repeated, so a better, more coordinated approach was necessary. Many ideas, options and solutions were discussed during this meeting. Concurrently, reports from neighbors were forwarded to Chula Vista Police Department, managers, officers, and investigators who contacted and met with some residents in some of the more seriously impacted neighborhoods. The City Attorney’s office met again on January 13<sup>th</sup> with an informal “executive group” of the PSAR to continue this dialogue. A work program of both near term and long term actions was outlined involving the Police Department, Code Enforcement, the City Attorney’s Office, the District Attorney, the County Sheriff, PSAR itself and other involved agencies and stakeholders.

Over this same time period Channel 10 news was apprised of the story. It ran two televised stories, one on January 5<sup>th</sup>, and one on January 12<sup>th</sup>.

This issue subsequently came before the Council at its January 24<sup>th</sup> meeting through public comment. Affected residents and real estate agents expressed their frustration and concern that not enough was being done to address the problem. At that meeting City Attorney Glen Googins and Chula Vista Police Captain, Gary Ficacci, reported to the City Council on their views of the nature and extent of the problem, the various parties and issues involved, and the steps that had been taken to date, and that were ongoing, to mitigate the threat. City Council requested that a more detailed report be brought back on February 14<sup>th</sup>.

On February 6<sup>th</sup> Ms. Brown was arrested. She has been charged with 61 criminal counts and is being held on \$275,000 bail. Ms. Brown is reported to have performed this alleged fraud on over 30 Chula Vista properties. The District Attorney/Chula Vista Police Department investigation is continuing into Ms. Brown’s and her associates; therefore, additional charges or arrests may be pending.

## **ENVIRONMENTAL REVIEW**

This proposed activity has been reviewed for compliance with the California Environmental Quality Act (CEQA) and it has been determined that the activity is not a “Project” as defined under Section 15378 of the State CEQA Guidelines because it will not result in a physical change in the environment; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines, the activity is not subject to the CEQA. Thus, no environmental review is necessary.

## **RECOMMENDATIONS**

Council accept the report and provide further direction to staff as appropriate.

## **BOARDS/COMMISSION RECOMMENDATION**

This issue could be taken up by the Public Safety Subcommittee if additional City Council input is necessary.

## **DISCUSSION**

The following report presents a summary of the different issues and actions being acted on or considered to reduce the frequency and negative impacts of real estate fraud and criminal trespass activities within City neighborhoods. While no one measure will solve the problem, a combination of steps in a number of areas should improve how these issues are handled, and reduce the likelihood of repeat offenders.

### **1. Enhanced County Recorder Title Change Reporting Program (The Contra Costa Model)**

Staff has investigated and received information that other counties in California utilize an early reporting system that notifies persons currently on title of any recorded changes to their title via U.S. Mail. Noticed parties are advised to notify the District Attorney's Office Real Estate Fraud Division immediately if they believe any such recordings are fraudulent.

As it stands now, Contra Costa, Riverside and Los Angeles County are the only California counties to provide such a service to their constituents. The Contra Costa Board of Supervisors approved the program on August 2, 2011. The system went into effect on November 15, 2011 and is reported to have already resulted in real estate fraud convictions.

Under the Contra Costa system County residents are notified by mail if certain real estate recordings occur pertaining to their property. In order to identify the transaction, the notifications include copies of the first two pages of the subject documents. If the recording was not authorized by the owner or the owner feels potential fraud may be taking place, a dedicated phone number at the District Attorney's Real Estate Fraud Unit is provided. By calling this number property owners will be able to inquire about the details of the transaction or notify the District Attorney of potential fraud. A flowchart provided by the Contra Costa County Recorder's Office attached hereto provides further description on how this system works.

San Diego County does not currently have a similar system. Preliminary inquiries with staff at the County Recorder's office suggest that with the software that San Diego uses there could be significant cost and technology challenges to instituting a similar system here. Upgrade costs could be more significant because to be effective the system would need to be implemented County-wide. Nonetheless, this program warrants further investigation and staff will continue to work with the County and the DA to determine program feasibility and cost, and to identify how existing San Diego County real estate fraud funding is allocated.

### **2. Best Management Practices For Securing A Property**

Enhancing the security of a vacant home is a much more cost-effective measure in the long run than removing trespassers and repairing property damage. Fortunately, owners of vacant

properties have a range of options to prevent, reduce and/or detect, the likelihood of unauthorized entry.

- Putting a trusted representative on the property as an on-site caretaker;
- Engaging neighbors as “eyes and ears” to monitor the property;
- Establishing relationships with neighbors and encouraging them to report trespassing and vandalism to the owner and to police;
- Hiring private security to regularly drive by, walk through the property, and test doors and windows;
- Giving vacant properties not posted as vacant a “lived in” look, such as using timers to turn on a radio and indoor and outdoor lights;
- Maintaining landscaping and promptly removing newspapers, fliers or phonebooks left on the property, securing any trash or recycling containers;
- Immediately repairing broken doors and windows;
- Having a representative park a vehicle on the property and come and go from the property on a varied schedule;
- Using high-quality door, window and gate locks;
- Using cheap “squealer” alarms for doors and windows and maintaining an alarm system;
- Installing and monitoring interior and exterior cameras, many of which are low-cost, easy to use and move, and web-based;
- Alerting utility providers to report and reject unauthorized attempts to activate services; and
- Installing temporary, locked “construction” fencing around the property, as appropriate.

In some jurisdictions, property owners have boarded up vacant properties with steel siding until the property is ready for its new owner. Enclosing the property with a physical barrier can be an effective bar to unauthorized entry but can be unsightly in the neighborhood.

The City Attorney has asked PSAR to put together a summary of their own “best practices” in this area so that a combined list of security options can be shared throughout the property management community. As part of the City’s Apartment Safety Project, City advice and assistance in this area to apartment property managers has been an effective tool in helping reduce incidents of crime and disorder at high calls for service apartment complexes.

### **3. Advanced Authorization For Arrest (Trespass Authorization)**

One tool that citizens can use, and is already available to them through the Police Department, is an “advanced authorization for arrest for trespass” form. This form is authorized per California Penal Code Section 602(o). It permits an owner, or an owner’s representative, to file with any local police department an authorization form permitting a police department to arrest anyone found on a property after they have been requested to leave and refuse to do so. The authorization form can only last a maximum of six months per the Code and after the six months expires it must be filed again. The owner or owner’s representative must post the property as “closed to the public.” The arrest is a misdemeanor arrest and, at this point must still be processed and prosecuted through the District Attorney’s Office. In the past, this form has

largely been used by commercial properties with vagrancy problems, but it could also be utilized effectively in the residential setting.

Staff feels this is an important tool that has been under-utilized and could assist with Police field engagements and arrests in the real estate fraud situation. Police and legal staff have been working with PSAR to develop improvements and better adapt the existing process to these circumstances. Pending improvements include:

- An improved database to facilitate officer access to trespass arrest authorizations and property data while in the field.

- Revised filing guidelines with back up title documents to discourage fraudulent filings.

- Bank contact information to minimize the need for on-site real estate agent citizen's arrest authorization.

Although better use of this tool will help, it is not a panacea. Banks and their representatives need to fully cooperate with the Police Department and the District Attorney's Office to ensure successful prosecution. However, these types of cases and other lower level/single incident misdemeanors may not meet current DA prosecution guidelines or priorities, so criminal issuance of a criminal complaint is not guaranteed in these circumstances.

#### **4. Locksmith Regulations**

Persons who perpetrate real estate fraud do so frequently by enlisting the aid of locksmiths in entering the abandoned homes. The locksmith will pick or cut the lock of the home to gain entrance at the request of the fraudulent actor and then change all the locks to prevent access by lawful owner/agents.

Unfortunately, current state regulations for locksmith licensing do not directly address this issue. Locksmiths are regulated by the California Business & Professions Code. One of the specific regulations states: "Any locksmith who knowingly and willfully opens any residence, or commercial establishment for another by any method involving an on-site inspection of a door or entrance, whether or not for compensation, shall obtain the street address of the residence or commercial establishment, and the signature of the person for whom the residence or commercial establishment was opened on a work order form. The following information regarding the person requesting entry to the residence or commercial property shall be recorded on a work order form: (1) Name. (2) Address. (3) Telephone Number. (4) Date of Birth. (5) Driver's license or identification number." Cal. Business & Professions Code § 6980.55.

It is not clear if these limited requirements are closely followed or monitored. Moreover, these requirements do not dictate that the locksmith attempt to verify ownership prior to entry. Possible improvements in this area include:

- Notifying locksmiths that they could be contributing to an unlawful entry thereby assuming liability for the entry.

- Local regulations imposing additional requirements to hold locksmith's more accountable.

Staff is currently preparing the appropriate notice to local locksmiths and researching the extent to which local regulations may be lawfully added to the state licensing scheme. The effectiveness of such measures is hard to predict, particularly since some fraudulent actors have and could continue to merely cut the locks and changed them on their own without the assistance of a locksmith.

## **5. Unlawful Detainer and Other Civil Remedies**

Once fraudulent possession of a residence is obtained it can be very difficult for a lawful owner or agent to retake possession. Even in the limited circumstances where an on-site arrest can be made, a court order returning possession to the lawful owner may be required. One “expedited” legal process to remove occupants that is available and well known to banks and real estate agents is unlawful detainer. Staff recommends that, in addition to any and all other proactive security measures taken and/or criminal arrests or prosecutions that may be appropriate and ongoing, if unlawful possession is obtained, a civil unlawful detainer action be commenced by the lawful owner/agent as soon as possible, and aggressively prosecuted to conclusion. A summary of this process is set forth below.

In General. In a traditional landlord-tenant relationship, the lease agreement is a contract that establishes the parties’ respective rights and obligations. Numerous provisions of the California Civil Code and Code of Civil Procedure govern nearly all aspects of the landlord-tenant relationship, including the reasons for and manner in which a landlord may terminate a renter’s tenancy.

Terminating a tenancy. In a lease for six or twelve months both parties are obligated to perform their respective duties for the duration of the lease. A landlord cannot evict a tenant during the lease period absent a substantial violation of the lease. In a month-to-month tenancy, a landlord must give a tenant 30-days written notice to end the tenancy, if the tenancy is less than one year, or 60-days’ notice if the tenancy is more than one year. Cal. Civ. Code § 1946. A reason for terminating the tenancy is not required in most instances.

A landlord does not have to wait out a lease or a 30- or 60-day notice period for serious lease violations or unlawful behavior. The landlord may attempt to negotiate with the tenant to voluntarily end the tenancy. The landlord may initiate termination of tenancy with three-days’ written advance notice for several reasons provided by law: failure to pay rent; violating a provision of the rental agreement; damaging the property; committing a nuisance on the property; committing domestic violence on, sexually assaulting, or stalking another tenant on the property (Cal. Code Civ. Proc. § 1946.7); using the premises for an unlawful purpose; dealing, using, growing, importing or making illegal drugs (Cal. Code Civ. Proc. § 1161); or unlawful conduct involving ammunition or weapons. Cal. Civ. Code § 3485.

Although the term “three-day notice” may imply that a landlord quickly will regain possession of the rented property, in reality repossession can take several weeks in the best circumstances. As with other civil actions, the process begins with notice. A landlord must properly serve a properly drafted termination notice for the service to be legally effective. Cal. Code of Civ. Proc. §1162. Personal service on the tenant at home or work is generally preferred, followed by substitute service on another person in the tenant’s household, along with mailing the notice; or

posting the notice on the tenant's door along with mailing. The three-day period begins on the first day after the notice is served, with weekend days and holidays excluded. Cal. Code Civ. Proc. §§12, 12a. Mistakes in the notice or manner of service will require the landlord to start over.

Filing the Lawsuit. If the tenant does not voluntarily move out after the landlord has properly served the required notice, the landlord may evict the tenant by pursuing an unlawful detainer action in San Diego Superior Court, Civil Division. A landlord pursuing eviction must use the court-administered eviction process, which provides the tenant the right to a court hearing to contest the eviction. A landlord cannot change the locks, cut off utilities, or seize the tenant's property to expedite or carry out an eviction on his or her own. A landlord who uses illegal methods to evict a tenant is subject to monetary penalties and liability for the tenant's damages. Cal. Civ. Code §789.3.

As with the notice of termination and other civil lawsuits, the landlord plaintiff must properly serve a summons and complaint on a tenant defendant as required by law. After service, the tenant has five to 15 days to file a written answer with the court, depending on the type of service used. Cal. Code of Civ. Proc. §1167.3. Failure to file an answer will result in a default, in which the court will issue a writ for possession. Code of Civ. Proc. §§712.010, 715.010. If a tenant files an answer, the matter will be set for a hearing before a judge, usually within three weeks. Code of Civ. Proc. §1170.5(a). Either party may request a jury trial, with the requesting party responsible for paying a deposit for jury fess and the losing party responsible for all jury costs. At a hearing a landlord must provide evidence to support the eviction; a tenant may rebut with his or her own evidence, or introduce evidence that the landlord breached a duty and is pursuing eviction to retaliate against the tenant. A judge will make a decision and enter judgment. The losing party may appeal. If the landlord prevails, the court will issue a writ of possession, which the San Diego County Sheriff's Department will serve. It can take two weeks for the Sheriff's Department to serve the writ. A tenant has five days from service of the writ of possession to move. If the tenant has not moved out by the end of five days, Sheriff's deputies will physically remove the tenant. The landlord can regain possession of the rental and change the locks. Belongings left in the unit may be removed along with the tenant or stored by the landlord, who can charge the tenant a storage fee. A losing party is responsible for the costs and fees of the prevailing party in the unlawful detainer action. If the landlord prevails, the tenant is liable for the landlords' court costs and fees, along with any unpaid rent, storage fees, and repairs for property damage.<sup>1</sup>

Without a landlord-tenant relationship, the owner of property unlawfully occupied by another is a victim of "squatting" or possibly "rent skimming." With "squatting," a person has entered and occupied real property without the owner's consent. With "rent skimming," a person, fraudulently and illegally acting as an owner or agent, rents the owner's property to another, who may or may not be aware of the fraud.

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<sup>1</sup> Some California courts have held that unlawful detainer laws do not apply where there is no conventional landlord-tenant relationship (*Klein v. Loeffler*, 96 Cal. App. 383 (1929)), or where a former tenant resumes occupancy of real property after tenancy ended. (*Walls v. Preston*, 28 Cal.App. 383 (1865)). Because of these court decisions, some legal practitioners, such as the Los Angeles City Attorney's Office, have advocated enforcing criminal trespass laws to punish the offender and restore possession to the property owner. However, most courts would insist the unlawful detainer process be fulfilled before ordering the vacancy of any home where a resident (knowing or not) occupied a property under a fraudulent lease.

Comparison with Criminal Prosecution. While the criminal justice system provides some opportunity for relief for crime victims, such as restitution for out-of-pocket damages suffered as a result of a crime, it does not provide the unlawful detainer's opportunities for due process to sort out tenancy issues of a resident who may be an innocent victim of a "rent skimming" scam. Once initiated, most unlawful detainer actions take several weeks to conclude. A criminal prosecution, on the other hand, can take several months to conclude, much longer if appeals are filed.

Property owners have authority to pursue unlawful detainer actions to enforce their property rights. A prosecution agency, on the other hand, has exclusive authority over whether to file a criminal charge and what charge to file. The San Diego District Attorney has jurisdiction over felony and misdemeanor violations of state law committed in Chula Vista. If the District Attorney exercises its independent discretion not to file a criminal charge on an arrest report submitted by law enforcement, no further action is taken on the arrest. (An arrest may be considered in evaluating a future investigation or arrest involving the suspect.) A more detailed discussion of the criminal process is provided in Section 7 of this report, below.

#### Quiet Title

When two or more persons have adverse claims to the same property, any of the claimants may initiate a quiet title civil lawsuit. The purpose of the action is to eliminate an adverse claim and to establish, perfect or "quiet" the title of the property in one or more of the claimants. This type of lawsuit would be effective to eliminate fraudulent title claims such as Ms. Brown's. The correct party to bring such a lawsuit would be a bank once they have assumed title and it would not generally affect any tenants who have moved in.

#### Restraining Order

Some citizens have reported that they and their families have been personally threatened by fraudulent actors. The Police Department strongly urges anyone fearing for their own safety to notify CVPD. The matter will be immediately investigated. Whether or not the conduct is found to be criminal, another highly recommended option is to file a restraining order with Superior Court. A restraining order application is relatively easy to complete and file with the Court. Hearings on restraining orders are expeditiously set. Following a hearing if granted the order will impose a court injunction on the named person from coming within 100 yards of the filing person, their family, their vehicle, workplace and home. Anyone found in violation of a restraining order will be immediately arrested and charged with violating the order.

#### Website Links

Some information and resources in these areas are already available on the City Attorney's website. An update is underway to add information, especially regarding the process for obtaining restraining orders.



## **6. Police Rules For Engagement & Challenges With On-Site Enforcement Of Disputed Property Ownership**

CVPD has received and responded to numerous calls for service from real estate agents/property managers who report that subjects have unlawfully acquired residences and have since either rented them out or are trespassing. These actions typically precede the forcible breaking of locks to the property and sometimes having locksmiths re-key the properties. Every allegation of criminal action must be thoroughly reviewed and accurately reported in order to satisfy the rigorous standard of Constitutional due process.

Every situation is different and each response hinges on the specifics facts and any evidence presented to the officers while in the field. However, when CVPD officers receive a radio call to respond to this type of incident, their main priorities in their response are as follows:

Preserve the Peace. Responding officers' highest priority is to preserve the peace and ensure the safety of all parties present. One aspect of this is where there is a dispute regarding rights of ownership and possession, not to take sides. This has created understandable frustrations out in the community as law abiding citizens feel like the police are not doing enough to protect their rights. For better and for worse, police handling of these incidents is limited by constitutional limits on search, seizure and arrest under the 4<sup>th</sup> Amendment and due process

Document Incident and Gather Evidence. Even where an arrest is not made, officers are trained and advised to gather evidence of the incident. In addition, there could be several hundred documents which need to be acquired through proper channels and evaluated by trained personnel to establish the true owner. This process can be a very time consuming and tedious task to complete and cannot be completed in the field. In every case, however, where a crime is alleged or circumstances suggest a crime may have been committed, officers are trained to do the following:

- Attempt to obtain copies of any documents regarding the disputed property;
- Interview the parties present; and
- Document the matter on a police report, which will be forwarded to the appropriate investigator and/or agency.

Make a Citizen's or Officer Arrest if Circumstances Warrant. If a citizen's arrest is demanded or may be warranted based upon the officer's professional assessment of the circumstances, the officer must first establish if probable cause exists at that time for an arrest to take place. In the case of a citizen's arrest, where the officer did not observe the criminal conduct alleged, the officer is also required to have the complaining party sign a citizen's arrest form. The officer also advises the citizen of the potential civil liability of making a citizen's arrest and court procedures and testimony required as a result. If the complaining party wishes to proceed, the officer will issue a misdemeanor citation to the arrestee, which will also be signed by the citizen making the arrest.

Seldom will officers in the field be able to properly ascertain who is legally responsible for the property in question. This is compounded by the fact that on occasion, both parties may

produce conflicting documents, raising into question the true legal owner or agent thereof. Absent obvious signs of trespass (such as broken windows, broken locks, no indication of residence, to name just a few), the officers generally do NOT remove any party from a residence when they have a lease (even a fraudulent one), as this would need to be handled via an eviction process through the civil process. The existence of someone in a property under lease eliminates the "willful" aspect that is required for a criminal trespass arrest and prosecution. Note: In San Diego County, the protocol for serving/enforcing an eviction process is carried out by the Sheriff's Department.

San Diego Police Department Approach. The Police Department has confirmed with the San Diego Police that their approach to this type of criminal trespass is the same. San Diego Deputy Chief Boyd Long has stated via email: "Like Chula Vista we handle these like any civil process. Unless there is a Judge's order of eviction or clearly a trespass violation, we direct the parties involved to seek remedy through the civil court process. We do not evict."

Improvements Being Worked On. Although police officers are inherently limited in the field in situations like this, steps are being taken to formalize and to add details to their rules of engagement in order to ensure consistency and maximize effectiveness going forward. In addition, officers will be put in a much better position to be more assertive if the banks and real estate agents file Advance Authorization to Arrest forms and/or help facilitate citizen's arrests as described above.

The things concerned residents and real estate professionals can do that will assist the Police Department with situations like this are:

- Notify the Police and Code Enforcement of abandoned, vacant homes.
- Notify the Police of any signs of breaking and entering or vandalism on abandoned, vacant homes.
- Take pictures of any vacant property (before and after pictures always help).
- Establish relationships with their neighbors to ensure successful monitoring of vacant homes.
- Establish a Neighborhood Watch if one does not already exist.
- Collecting any documents and providing them to officers that establish ownership or are used by fraudulent actors to allegedly establish ownership.

Members of the public confronting fraudulent actors are urged to maintain the peace and when any confrontations escalate to contact the Police Department immediately.

## **7. Criminal Prosecution**

The U.S. Attorney (supported by the F.B.I.) and the District Attorney (supported by CVPD) are responsible for criminal prosecutions in the City of Chula Vista.

Which agency prosecutes the criminal law depends upon the specific nature and severity of the fraud and/or criminal trespass involved. If federal laws are implicated or the fraudulent scheme includes multi-state activity the U.S. Attorney would be the prosecuting authority.

In this case, the District Attorney is the prosecuting authority. The District Attorney's Office worked in conjunction with the Chula Vista Police Department who began preparing investigatory reports for real estate fraud prosecution as soon as they were made aware of this scam.

Even though no arrest was immediately made the voluminous amount information was synthesized, gathered and forwarded to the District Attorney's Office for their review. The Police Department undertook a lengthy investigation and coordinated on fulfilling all the required information, witnesses and contacts necessary to ensure successful criminal prosecution. The Police Department has dedicated hundreds of hours of officer time on this prosecution using multiple detectives and officers.

Delays in arresting Ms. Brown were in large part due to the widespread fraud she had perpetrated on the community as she claimed title to and rented out roughly 37 properties. Other challenges included the total number of alleged crimes Ms. Brown committed (61), reduced staffing within the District Attorney's Office, poor communication from the bank representatives and the significant challenges in gathering all the necessary information required to prove a widespread real estate fraud case beyond a reasonable doubt. Regardless, the District Attorney did indicate this prosecution was a high priority and worked as expeditiously as possible to ensure that the case was properly filed and every single criminal charge had the best chance possible of a conviction here.

The District Attorney's Office has a specific division for real-estate criminal conduct (the Real Estate Fraud Division) and it was established to prosecute these very types of crimes. In addition, the District Attorney has stated that her Office would also seek to eliminate this behavior through filing civil action Unfair Business Practices Act lawsuits (discussed in greater detail below).

Consistent with District Attorney policy, the Chula Vista Police Department was unable to discuss specifics and status of the investigation with members of the public in order to avoid compromising it. An inability to communicate specifics of a criminal investigation can be frustrating (to say the least) for members of the public, but the District Attorney's Office views it as essential in order to prevent criminals from using the information to dodge arrest and to enhance the likelihood of successful prosecution.

City Attorney's Authority For Criminal Prosecution. The City Attorney has concurrent jurisdiction with the District Attorney to prosecute persons charged or guilty of State law misdemeanors if committed within city limits. City Charter Section 503(6). Notwithstanding the forgoing, given the specialized nature and resources required for criminal prosecutions the City Attorney's office has not historically exercised such authority. This is true for all other cities in the County, except for the City of San Diego. The City Attorney does not have the authority to prosecute State law felonies – only the District Attorney does.

Neighborhood “quality of life” issues in the City of San Diego are prosecuted by the San Diego City Attorney’s Office Neighborhood Prosecution Unit. This Unit is focused on combating crimes “that reduce the quality of life in San Diego neighborhoods. These include, but are not limited to prostitution, graffiti, disturbing the peace, vandalism, alcohol and drug offenses, gang offenses, and transient crimes. Neighborhood prosecutors manage traditional misdemeanor prosecution such as trials, evidentiary hearings, motions, legal research, and issuing while working in targeted neighborhoods side-by-side with police officers and community members on problem-solving initiatives.”

Should the City Council desire the City Attorney’s Office a similar division it would have to authorize, fund and establish a “neighborhood prosecution unit” that would require multiple staffing additions (attorneys, investigators and paralegals). This could enhance the City’s local capacity to handle smaller scale criminal trespass violations. However, felony real estate fraud cases (like the Diane Brown case) would still be beyond the City Attorney’s legal authority.

Any violations of mandatory requirements of the Chula Vista Municipal Code are considered municipal misdemeanor violations unless charged as an infraction. CVMC § 1.20.010(a). The City Attorney is authorized by the City Charter to prosecute these violations. City Charter Section 503(6).

## **8. Chula Vista Code Enforcement Options/Issues**

Background. In June 2007, a comprehensive program known as the Abandoned Residential Properties Registration Ordinance (commonly referred to as the RAP Program) was implemented by this Council in response to citizen complaints about neighborhood blight resulting from an unprecedented increase in residential foreclosures, with many foreclosed houses left abandoned. The ordinance was drafted to reduce and eliminate the blight that abandoned homes cause, to stabilize neighborhoods and to hold accountable the ultimate possessors of these abandoned properties (i.e., the banks). The ordinance is contained in Chapter 15.06 of the Code and is attached for your reference.

The RAP Program requires banks to inspect properties with at the time they record a Notice of Default to determine if they are vacant or occupied. If a property is vacant and otherwise meets the ordinance criteria, the program requires that the lender register the property with the City, giving contact information for the lender and the property manager. It also requires that the lender immediately secure and maintain the exterior of the property to the neighborhood standard. The property must be posted with the name and 24-hour contact number of the company or person responsible for the regular inspection, maintenance and security of the property. This places the responsibility for security and maintenance where it is most logical and effective, i.e., onto the beneficiaries. Posting the property manager information allows neighbors to have direct contact with those responsible for securing and maintaining the property, helping to stop deterioration and to preserve the neighborhood. When code enforcement officers find violations on a property, they send a notice to all recorded parties giving 30 days to correct the violations. If, upon reinspection, lenders do not comply with the ordinance, they face fines and penalties.

Soon after the ordinance was adopted, the local real estate industry raised concerns that Code Enforcement was acting too aggressively with the RAP Program. After working with local real estate agents, listing representatives, title and sales representatives for six months in mid 2009, City staff amended the ordinance in several ways. One of those changes excludes from the ordinance requirements properties that are under a current notice of default or notice of trustee's sale and being offered for sale, rent or lease. Thus, those properties may sit vacant for many months without having to comply with the ordinance and without having to register with the City. A second change is that banks are now allowed to register in a national electronic database that staff and real estate professionals can access. If they do this, they are not required to send in a registration form to the City, but the database records may not always be regularly updated. Banks are also no longer required to send in renewal registrations and to only send in updated information as needed. Another outcome of the meetings was a council policy that reduces the amount of fines for all violations, including for unsecured property.

Security Provisions. Section 15.60.060 of the RAP does contain provisions that require vacant or abandoned properties to be "maintained in a secure manner so as not to be accessible to unauthorized persons." Section 15.60.070 also grants fairly broad authority to code enforcement to specify what level of security is appropriate. Notwithstanding these provisions, code enforcement is not recommending more aggressive application of these provisions to the kinds of situations presented by the Browns. While any property can always be "better" secured, it is difficult to determine what constitute "adequate" security since virtually any home can be broken into. Although extreme security measures (like steel walls) might prevent break-ins, the appearance of such measures would create their own "blight condition" and are likely to make such homes an attractive nuisance. In addition, while aggressive civil action to remove unlawful occupants is recommended, and necessary, it will be difficult to determine whether or not a bank has acted reasonably or expeditiously for purposes of imposing fines where the civil eviction process is not entirely within the bank's control, and may become protracted as resulted of tenant defenses or resistance. This civil litigation process would also be extremely difficult to monitor critically. For these reasons, educating the banks and agents and encouraging better securing measures is the recommended course of action at this time. More aggressive actions and fines could and would be imposed under the existing rules if any vacant property owner/bank clearly takes no interest in securing their properties.

## **9. Unfair Business Practices**

Staff has investigated and researched civil options for the real estate industry in preventing fraudulent schemes such as the one PCA has perpetrated on this community. One of the strongest civil options through which an injunction can be obtained is that of the "Unfair Competition Law" or what attorneys commonly refer to as an unfair business practices lawsuit.

The Unfair Competition Law, California Business and Professions Code §§ 17200 through 17209, is California's most frequently used consumer protection statute. The reach of Section 17200 is broad and imposing; "the Legislature apparently intended to permit courts to enjoin ongoing wrongful business conduct in whatever context such activity might occur."

"Unfair competition" is defined in Section 17200 as encompassing any one of the following five types of business "wrongs:" (1) an "unlawful" business act or practice; (2) an "unfair" business

act or practice; (3) a "fraudulent" business act or practice; (4) "unfair, deceptive, untrue or misleading advertising"; and (5) any act prohibited by Sections 17500-17577.5. The definitions in Section 17200 are disjunctive. Each of these five "wrongs" operates independently from the others. In other words, a practice is prohibited as "unfair" or "fraudulent" even if not "unlawful" and vice versa.

Plaintiffs can seek actual damages for the loss of their business, can seek restitution of the money gained by the unfair or unlawful business practice and most importantly can seek an injunction preventing the ongoing harm from continuing to occur.

Citizens or businesses are authorized to file an unfair business practices lawsuit so long as they allege, show and prove that their business has been directly harmed by the unfair business practice.

#### **10. Summary of Ongoing Actions and Recommendations**

Because of the complex nature of this issue, cooperation and action from a variety of parties will be necessary going forward. This section briefly summarizes the various actions discussed in the report and allocates responsibility to the appropriate party.

##### City:

- Continue to work with the County Recorder and the DA to determine if the Contra Costa model is feasible and to identify available funding.
- Continue to work internally among all relevant Departments (Police Department, Code Enforcement, City Attorney's Office) to develop best practices and share information.
- Continue to coordinate and communicate with the public and real estate professionals to share information, coordinate solutions, and resolve specific concerns.
- Finalize both the Advance Authorization to Arrest process and a City/PSAR summary of best management practices for property security and circulate to PSAR and others.
- Notify all Chula Vista locksmiths of real estate fraud to prevent their further involvement in any real estate fraud. Explore and present options for additional regulations.
- Continue to coordinate with all non-city government entities on this matter including the DA and the Sheriff to indicate the high priority high impact nature of this conduct.
- Coordinate and Report through the Public Safety Subcommittee as appropriate.

##### Real Estate Professionals:

- Establish an executive committee responsible for developing and disseminating possible solutions to this problem and working with law enforcement to coordinate the flow of

information. Doing so would enhance efficiency and communication amongst all parties that have or are affected.

- Implement and take advantage of Advance Authorization to Arrest and Best Management Security Practices.
- Coordinate with banks to obtain civil court orders to enjoin fraudulent conduct, quiet title and remove and/or unlawful occupants to ensure swift eviction of tenants.
- Ensure that bank-owned properties are securing the property in the best manner possible

Homeowners:

- Coordinate with the real estate professionals and have neighborhood representatives join any executive group formed.
- Notify the Police and Code Enforcement of abandoned, vacant homes.
- Notify the Police of any signs of breaking and entering or vandalism on abandoned, vacant homes.
- Notify the Police of alleged real estate fraud.
- If you feel threatened or have been a victim of threats of violence immediately file a restraining order with the Superior Court.

Rentors:

- Request proof of ownership documents prior to renting any vacant properties; do not take at face value great rental deals for large, vacant properties; report alleged fraudulent conduct to the Police Department.

**DECISION MAKER CONFLICT**

Staff has reviewed the property holdings of the City Council Members and has found no property holdings within 500 feet of the boundaries of the property which is the subject of this action.

**FISCAL IMPACT**

There is no fiscal impact other than the substantial staff time invested for this report. However, additional staff and other costs may be incurred depending upon the ultimate program of action developed and implemented.

**ATTACHMENTS**

- 1) Contra Costa County Real Estate Fraud Notification System Flowchart
- 2) CVMC Chapter 15.06, the Abandoned Residential Property Registration ordinance.

*Prepared by: City Manager, Chula Vista Police Department, Code Enforcement and City Attorney's Office.*

## **ATTACHMENT 1**

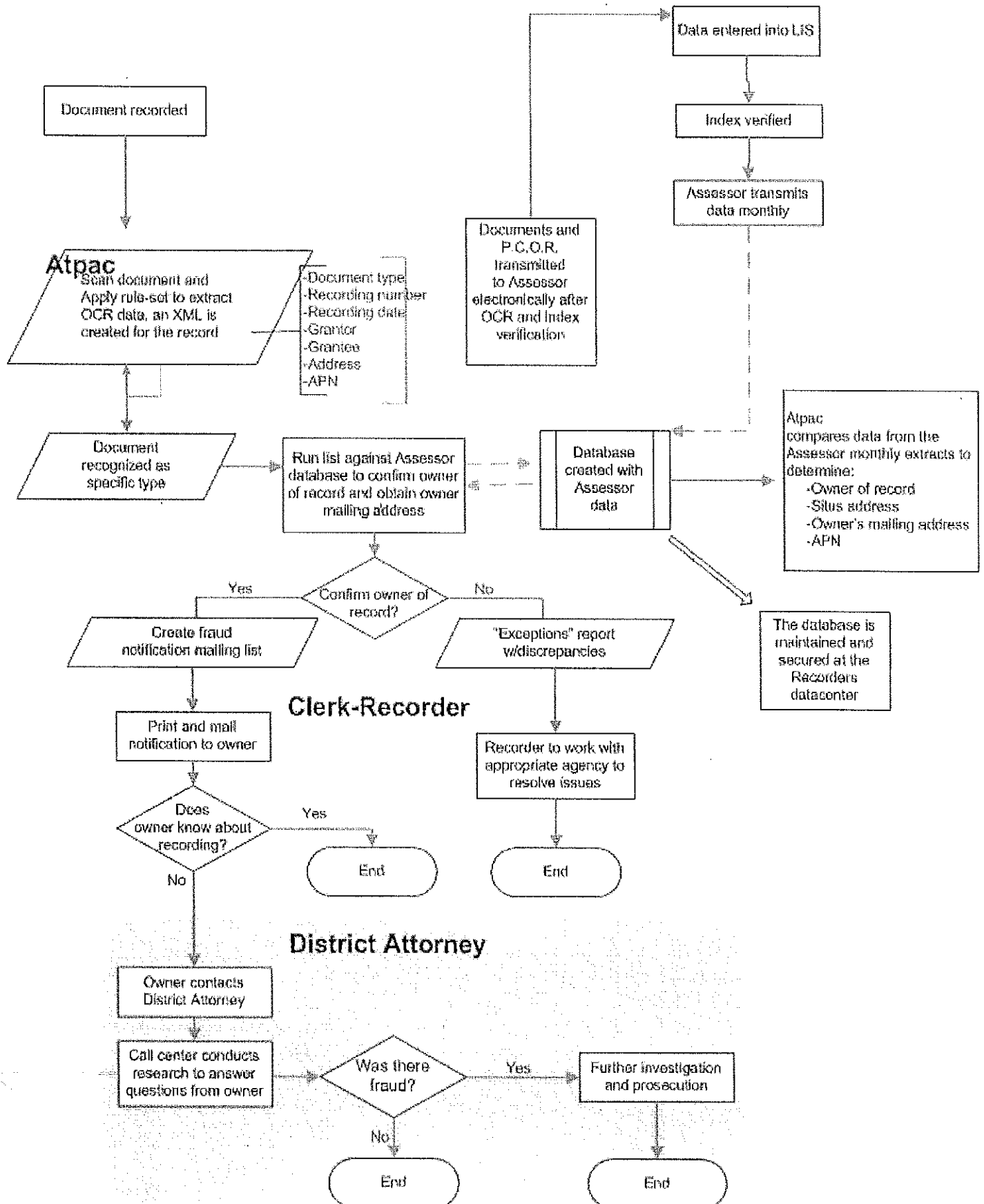


# Clerk-Recorder/District Attorney Fraud Notification Program

10/24/11

## Clerk-Recorder

## Assessor



## **ATTACHMENT 2**

## Chapter 15.60

### ABANDONED RESIDENTIAL PROPERTY REGISTRATION

#### Sections:

- 15.60.010 Purpose/scope.
- 15.60.020 Definitions.
- 15.60.030 Recordation of transfer of loan/deed of trust/substitution of beneficiary of deed of trust.
- 15.60.040 Registration.
- 15.60.050 Maintenance requirements.
- 15.60.060 Security requirements.
- 15.60.070 Additional authority.
- 15.60.080 Fees.
- 15.60.090 Enforcement.
- 15.60.100 Appeals.
- 15.60.110 Violation/penalty.
- 15.60.120 Severability.

#### 15.60.010 Purpose/scope.

It is the purpose and intent of the Chula Vista City Council, through the adoption of this chapter, to establish an abandoned residential property registration program as a mechanism to protect residential neighborhoods from becoming blighted through the lack of adequate maintenance and security of abandoned properties.

Nothing in this chapter shall be interpreted to allow or encourage circumvention of the foreclosure statutes of the state of California. (Ord. 3150 § 1, 2010; Ord. 3080 § 1, 2007).

#### 15.60.020 Definitions.

For the purposes of this chapter, certain words and phrases used in this chapter are defined as follows:

“Abandoned” means a property that is vacant and is under a current notice of default or notice of trustee’s sale and is not currently being offered for sale, rent or lease by the owner subject to such action(s) (currently being offered for sale, rent or lease is evidenced by a sign posted on the subject property advertising the property for sale, rent or lease with contact information and current phone number and/or an active listing in an electronic database accessible to City staff), and/or property that has been the subject of a foreclosure sale where the title was retained by the beneficiary involved in the foreclosure and any property transferred under a deed in lieu of foreclosure, whether or not the property is being marketed for sale, rent or lease.

“Accessible” means a property or structure that unauthorized persons may gain access or entry to through a compromised/breached/unsecured gate, door, fence, wall, window, or other point of entry.

“Agreement” means any agreement or written instrument which provides that title to residential property shall be transferred or conveyed from one owner to another owner after the sale, trade, transfer or exchange.

“Beneficiary” means a lender or other entity under a note secured by a deed of trust.

“Buyer” means any person, co-partnership, association, corporation, or fiduciary that agrees to transfer anything of value in consideration for property described in an agreement of sale.

“Days” means consecutive calendar days.

“Deed in lieu of foreclosure” means a recorded document that transfers property from the trustor to the holder of a deed of trust upon consent of the beneficiary of the deed of trust.

“Deed of trust” means an instrument by which title to real estate is transferred to a third party trustee as security for a real estate loan. Used in California instead of a mortgage, this definition applies to any and all subsequent deeds of trust, i.e.: second trust deed, third trust deed, etc.

“Default” means the failure to fulfill a contractual obligation, monetary or conditional.

“Distressed” means a property that is under a current notice of default and/or notice of trustee’s sale or there has been a foreclosure by the trustee or has been conveyed to the beneficiary/trustee via a deed in lieu of foreclosure.

“Evidence of occupancy” means any condition visible from the exterior that on its own, or combined with other conditions present, would lead a reasonable person to believe that the property is legally occupied. Such conditions include but are not limited to secured/locked structures; active utility services; the absence of overgrown and/or dead vegetation; the absence of an accumulation of newspapers, circulars, flyers and/or mail; the absence of an accumulation of trash, junk and/or debris; the presence of window coverings such as curtains, blinds and/or shutters; the presence of furnishings and/or personal items consistent with residential habitation; statements by neighbors, passersby, delivery agents, or government employees that the property is legally occupied; or actual contact with occupants.

“Evidence of vacancy” means any condition visible from the exterior that on its own or combined with other conditions present would lead a reasonable person to believe that the property is

vacant. Such conditions include, but are not limited to, overgrown and/or dead vegetation; accumulation of newspapers, circulars, flyers and/or mail; past due utility notices and/or disconnected utilities; accumulation of trash, junk and/or debris; the absence of window coverings such as curtains, blinds and/or shutters; the absence of furnishings and/or personal items consistent with residential habitation; and statements by neighbors, passersby, delivery agents, or government employees that the property is vacant.

"Field service provider" means an individual, entity or department that is responsible for inspecting, securing, and maintaining abandoned property.

"Foreclosure" means the process by which a property, placed as security for a real estate loan, is sold at auction to satisfy the debt if the trustor (borrower) defaults.

"Inspection" means a physical investigation at a property to obtain evidence of occupancy or vacancy and/or to verify compliance with this chapter and any other applicable code or law. Although interior inspections may be allowed under a deed of trust, they are not required by this chapter.

"Neighborhood standard" means those conditions that are present on a simple majority of properties within a 300-foot radius of the subject property. A property that is the subject of a neighborhood standard comparison, or any other abandoned property within the 300-foot radius, shall not be counted toward the simple majority.

"Notice of default" means a recorded notice that a default has occurred under a deed of trust and that the beneficiary intends to proceed with a trustee's sale.

"Owner" means any person, co-partnership, association, corporation, or fiduciary having a legal or equitable title or any interest in any real property.

"Property" means any unimproved or improved real property, or portion thereof, situated in the city and includes the buildings or structures located on the property regardless of condition.

"Property preservation/real estate owned (REO) section/department" means the entity, group, section, department or the designee of a beneficiary that is responsible for inspecting, securing and maintaining abandoned and REO property.

"Residential" means any property, or portion thereof, situated in the city, designed or permitted to be used for dwelling purposes, and shall include all buildings and structures located on such property. This includes any property being offered for

sale, trade, transfer, or exchange as residential, whether or not it is legally permitted and/or zoned for such use.

"Responsible party" means the beneficiary that is pursuing foreclosure of a property subject to this chapter secured by a mortgage, deed of trust or similar instrument or a property that has been acquired by the beneficial interest at trustee's sale.

"Securing" means such measures as may be directed by the Director of Development Services or his or her designee so that the property is not accessible to unauthorized persons, including but not limited to the repairing of fences and walls, chaining/padlocking of gates, the repair or boarding of door, window and/or other openings. Boarding shall be completed to a minimum of the current HUD securing standards at the time the boarding is completed or required. Locking includes measures that require a key, keycard, tool or special knowledge to open or gain access.

"Substitution of beneficiary of deed of trust" means an instrument that transfers the beneficial interest under a deed of trust from one beneficiary to another.

"Trustee" is the person, firm, entity, or corporation holding a deed of trust secured by the property.

"Trustor" is a borrower under a deed of trust, who deeds property to a trustee as security for the payment of a debt.

"Turf stain" means the application of an environmentally safe stain or dye that colors dead/dormant vegetation green.

"Vacant" means a building/structure that is not legally occupied. (Ord. 3150 § 1, 2010; Ord. 3080 § 1, 2007).

#### **15.60.030 Recordation of transfer of loan/deed of trust/substitution of beneficiary of deed of trust.**

Within 10 days of the purchase and/or transfer of a loan/deed of trust secured by residential property, the new beneficiary/trustee shall record with the San Diego County Recorder's Office a substitution of beneficiary of deed of trust, or similar document, that lists the name of the corporation, entity and/or individual, the mailing address and contact phone number of the new beneficiary/trustee responsible for receiving payments associated with the loan/deed of trust. (Ord. 3150 § 1, 2010; Ord. 3080 § 1, 2007).

#### **15.60.040 Registration.**

Any responsible party/beneficiary or their designee shall perform an inspection of the property

that is the security for the deed of trust, upon default by the trustor, within 10 days of recording a notice of default with the San Diego County Recorder's Office. If the property is found to be vacant or shows evidence of vacancy, it is, by this chapter, deemed abandoned and the responsible party/beneficiary shall, within 10 days of the inspection, register the property.

Registration may be accomplished by either of the following methods:

A. By completing and returning to the Director of Development Services Department or his/her designee a City-provided registration form with required fee; or

B. By registering with a City-approved national database that contains the information set out below and which service the City may access at no cost.

Nothing in this section shall prohibit the use of both methods of registration.

From time to time, the City Manager may approve an acceptable national database(s) which shall be identified in writing and which shall be posted in the Development Services Department and on the City's website.

If the property is occupied but remains in default it shall be inspected by the responsible party/beneficiary, or their designee, monthly until (1) the trustor or another party remedies the default or (2) it is deemed abandoned. The responsible party/beneficiary or their designee shall, within 10 days of that inspection, register the property as described above.

The registration shall contain the name of the beneficiary/responsible party, the direct street/office mailing address of the responsible party/beneficiary (no P.O. boxes), a direct contact name and phone number for the responsible party/beneficiary and the name, address and phone number of the property management company, field service provider, property preservation or real estate owned (REO) section/department responsible for inspecting, securing, and maintaining the property.

In the case of hard copy registration under subsection (A) of this section, initial registration fee shall accompany the registration form. The registration shall be valid for as long as the registered property remains subject to this chapter. Any changes to the information required on the registration shall be reported to the Director of Development Services Department or his/her designee in writing within 10 days of the change. The City is not responsible to verify the accuracy of the information provided.

This section shall also apply to property that has been the subject of a foreclosure where the title was transferred to the beneficiary of a deed of trust involved in the foreclosure and any property transferred under a deed in lieu of foreclosure.

Property subject to this chapter shall remain under the registration requirement, security and maintenance standards of this section as long as the property remains abandoned.

It is the obligation of the responsible party/beneficiary/owner to inform the City of any pending action, such as a bankruptcy, other court or administrative action that would prohibit the responsible party/beneficiary/owner from taking any of the actions required in this chapter. (Ord. 3150 § 1, 2010; Ord. 3080 § 1, 2007).

#### **15.60.050 Maintenance requirements.**

The exterior of the property shall be, in comparison to the neighborhood standard, kept free of weeds, dry brush, dead vegetation, trash, junk, debris, building materials, any accumulation of newspapers, circulars, flyers, notices, except those required by federal, state or local law, discarded personal items including but not limited to furniture, clothing, large and small appliances, printed material or any other items that give the appearance that the property is abandoned.

The property shall be maintained free of graffiti, tagging or similar markings by removal or painting over with an exterior grade paint that matches the color of the exterior of the structure.

Insofar as there is existing or previously existing landscaping, all visible front and side yards shall be maintained to the neighborhood standard at the time registration was required. If no landscaping previously existed at the property in front and visible side yards, installation is not required under this chapter.

Landscape includes, but is not limited to, grass, turf stain, ground covers, bushes, shrubs, hedges or similar plantings, decorative rock or bark or artificial turf/sod designed specifically for residential installation.

Landscape does not include weeds, gravel, broken concrete, asphalt, decomposed granite, plastic sheeting, mulch (unless applied in conjunction with reseeded turf areas), indoor-outdoor carpet or any similar material.

Maintenance includes but is not limited to regular watering, irrigation, staining, re-staining, cutting, pruning and mowing of required landscape and removal of all trimmings.

Pools and spas shall be kept in working order so the water remains clear and free of pollutants and debris or drained and kept dry. In either case properties with pools and/or spas must comply with the minimum security fencing requirements of the state of California.

Adherence to this section does not relieve the beneficiary/responsible party of any obligations set forth in any covenants, conditions and restrictions and/or homeowners' association rules and regulations which may apply to the property. (Ord. 3150 § 1, 2010; Ord. 3080 § 1, 2007).

#### **15.60.060 Security requirements.**

Property subject to this section shall be maintained in a secure manner so as not to be accessible to unauthorized persons.

Secure manner includes but is not limited to the closure and locking of windows, doors (walk-through, sliding and garage), gates and any other openings of such size that leave it accessible. In the case of broken windows, securing means the reglazing or boarding of the window. Locking includes measures that require a key, keycard, tool or special knowledge to open or gain access.

The responsible party/beneficiary or their designee shall perform monthly inspections to verify that the requirements of this chapter are being met.

If the responsible party/beneficiary does not have a property preservation or real estate owned section/department, a field service provider or property manager shall be contracted to perform the inspection to verify that the requirements of this section, and any other applicable laws, are being met.

The property shall be posted with name and 24-hour toll-free contact phone number of the beneficiary or property preservation, real estate owned section/department, field service provider or property manager. The posting shall be no less than eight and one-half inches by 11 inches and shall contain, along with the name and 24-hour toll free contact number, the words "THIS PROPERTY MANAGED BY" and "TO REPORT PROBLEMS OR CONCERNS CALL" or similar. The posting shall be placed in a window adjacent to the entry door or attached to the exterior of the entry door. Exterior posting must be constructed of and printed with, or contained in, weather-resistant materials.

The property preservation/real estate owned section/department, field service provider, property manager or their designee shall inspect the property on a monthly basis to determine if the property is

in compliance with the requirements of this chapter. (Ord. 3150 § 1, 2010; Ord. 3080 § 1, 2007).

#### **15.60.070 Additional authority.**

In addition to the enforcement remedies established in Chapters 1.20, 1.30 and 1.41 CVMC, the Director of Development Services or his or her designee shall have the authority to require the responsible party/beneficiary of any property affected by this section to implement additional maintenance and/or security measures including but not limited to securing any/all doors, windows or other openings, installing additional security lighting, increasing on-site inspection frequency, employment of an on-site security guard or other measures as may be reasonably required to arrest the decline of the property. (Ord. 3150 § 1, 2010; Ord. 3080 § 1, 2007).

#### **15.60.080 Fees.**

The fee for registering an abandoned residential property shall be set by resolution of the City Council. (Ord. 3150 § 1, 2010; Ord. 3080 § 1, 2007).

#### **15.60.090 Enforcement.**

Violations of this chapter may be enforced in any combination as allowed in Chapters 1.20, 1.30 and 1.41 CVMC. (Ord. 3150 § 1, 2010; Ord. 3080 § 1, 2007).

#### **15.60.100 Appeals.**

Any person aggrieved by any of the requirements of this chapter may appeal insofar as such appeal is allowed under Chapter 1.40 CVMC. (Ord. 3150 § 1, 2010; Ord. 3080 § 1, 2007).

#### **15.60.110 Violation/penalty.**

Violations of this chapter shall be treated as a strict liability offense regardless of intent. Any person, firm and/or corporation that violates any portion of this section shall be subject to prosecution and/or administrative enforcement under Chapters 1.20 and 1.41 CVMC. (Ord. 3150 § 1, 2010; Ord. 3080 § 1, 2007).

#### **15.60.120 Severability.**

Should any provision, section, paragraph, sentence or word of this chapter be determined or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this chapter shall remain in full force and effect. (Ord. 3150 § 1, 2010; Ord. 3080 § 1, 2007).